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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/824,679	04/04/2001	Florent Duqueroie	05725.0876-00	3634

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EXAMINER

DOAN, ROBYN KIEU

ART UNIT

PAPER NUMBER

3732

DATE MAILED: 03/26/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/824,679

Applicant(s)

DUQUEROIE, FLORENT

Examiner

Robyn Doan

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 16 January 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) 1-57 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) 50 is/are allowed.
- 6) ☐ Claim(s) 1-5, 9-49, 51-57 is/are rejected.
- 7) ☐ Claim(s) 6-8 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-5, 9-49, 51-57 are rejected under 35 U.S.C. 103(a) as being unpatentable over Baudin et al in view of EP '260.

With regard to claims 1-5, 9-37 and 51-57, Baudin et al discloses an applicator device for applying a hair product comprising a base portion (inside 150), a tooth (109) having a free end and an end adjacent to the base portion, wherein the teeth and the base portion having a single piece, unitary construction formed by molding; the tooth also having a dispensing orifice (108) at the free end, and a passage (at 106) configuring to enable the dispensing orifice to be placed in flow communication with a reservoir (101) which contains a product. The device further comprising a height of the at least one wall (9, fig. 1b) tapering from the first portion to the second portion and also varying along its length, a surface of a base portion forming a drip pan (150 fig. 2a) to collect product flowing from the dispensing orifice of the tooth. The device also having a support (107) having one end intended to be associated with the application member and another end intended to be associated with the reservoir (101), the support

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including at least one channel (fig. 4a) configured to provided product flow from the reservoir to the passage of the at least one of the teeth; the reservoir having a handle body member (103) with at least one elastically deformable wall (col. 5, line 12). Baudin et al does not discloses a plurality of teeth being formed of an elastically deformable material and the elastically deformable material having a Young's flexural modulus of not more than about 200 MPA or having a Shore A hardness of from about 30 to 60. EP '260 discloses an application member for applying hair preparation comprising a base portion (6), a plurality of teeth being formed of an elastically deformable material (abstract, lines 5-6). It would have been obvious to one having an ordinary skill in the art at the time the invention was made to employ the plurality of teeth being formed of an elastically deformable material as taught by EP '260 into the hair applicator of Baudin et al for the purpose of providing a softness to the user's scalp and it would also have been an obvious matter of design choice to construct the elastically deformable material having a Young's flexural modulus of not more than about 200 MPA or having a Shore A hardness of from about 30 to 60, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In regard to claims 38-49 and 51-57, the claimed method is seen to be inherent in the above apparatus.

Claims 6-8 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

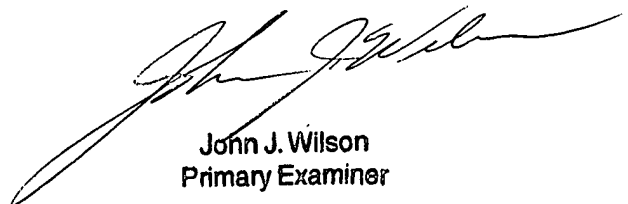
Claim 50 is allowable over prior art.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robyn Doan whose telephone number is (703) 306-9182. The examiner can normally be reached on Mon-Fri 9:30-7:00; alternate Mondays off.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.



Robyn Kieu Doan
Examiner
March 24, 2003



John J. Wilson
Primary Examiner